

Town of Amherst
Zoning Board of Appeals - Special Permit

DECISION

Applicant: Pasta E Basta, c/o Attorney John B. Howard

Date application filed with the Town Clerk: January 17, 2007

Nature of request: To modify Special Permit ZBA FY96-0043 to expand the hours of operation and alcohol service to between the hours of 11:00 AM and 1:30 AM daily for all three floors of the restaurant, and for approval of the change of officers, director and stockholders of the corporation

Address: 26 Main Street (Map 14A, Parcel 56, B-G Zoning District)

Legal notice: Published on January 24 and 31, 2007 in the Daily Hampshire Gazette and sent to abutters on January 23, 2007.

Board members: Tom Simpson, Hilda Greenbaum and Al Woodhull

Submissions: The petitioner submitted floor plans of the second and third floors, which had received site plan approval in 2003. He also submitted a new management plan and a certificate of the corporate vote appointing Marco Matarazzo as the new manager of the restaurant.

Other documents relevant to the application were:

- Special Permit ZBY FY96-0043 granted to Bruno Matarazzo to operate a restaurant on the first floor of their building;
- An earlier management plan for the use of the second and third floors of the restaurant after renovation, approved by the Board December 18, 2003;
- A memo from the zoning assistant dated February 2, 2007, giving the brief history of the differences in management plans as the transition from a one to a three-floor restaurant occurred.

Site Visit: February 6, 2007

The Board met with Marco Matarazzo, current owner, at the site. They observed the following:

- The restaurant is located in the central business district, which includes other restaurants, bookstores, clothing stores and retail sales;
- Each floor of the restaurant is long and narrow, with two sets of steep steps connecting the three floors;
- A large section of the first floor is devoted to food preparation, with a self-service counter;
- The second and third floors are full-service with waitresses;
- There are kitchens on the first and second floors; the third floor is tables only;
- A large bar is central to the second floor. There are no bars on the first and third floors;
- The views on the second and third floors are attractive, looking out onto the common.

Public Hearing: February 8, 2007

In the interests of full disclosure, Board Chair Tom Simpson stated that his company had business dealings with Pasta E Basta in the past. He now has no financial interest in this application and his decision on the application would not be influenced by past dealings, he said.

Attorney John B. Howard presented the petition at the hearing. Also present - the new restaurant owner Marco Matarazzo, the former owner Luciano Matarazzo, and the current manager Ayana Crichton. They gave the following information:

- They want all three floors to be open until 1:30 AM daily. Previously the first floor closed at 1 AM and the upper floors at 11:30 PM;
- The submitted certificate of the corporate vote, dated January 2, 2007 stated that the closing time would be 1 AM. The corporate vote was amended on January 31, 2007 to ask that the closing time be extended to 1:30 AM so that all patrons could leave safely after the last call for alcohol service at 12:45 AM;
- The management plan was likewise amended and re-submitted in order to change the closing time from 1 AM to 1:30 AM;
- The memo from the zoning assistant gave the essential details of the change of the operation from a self-serve restaurant to a full-service, three floor restaurant;
- They would like one management plan that will serve for the entire restaurant;
- Luciano became the sole owner of the restaurant in 1999 when his brother Bruno died;
- The ownership transferred to Marco Matarazzo on January 2nd, 2007, and they then realized that the FYY96 Special Permit needed to be modified;
- Marco has been the manager of the restaurant for the last 5-6 years;
- The establishment will continue to be a restaurant;
- The rooftop will not be used and there will be no outside dining;
- They have submitted an application to the Select Board for a revised alcohol license reflecting the change in hours of operation; a hearing will be held before the Select Board after the Special Permit process is finished.

The Board reviewed the submitted Management Plan with the applicants. The following points were made:

- The seating capacity listed as 105 refers to the total seating on all three floors;
- The full restaurant menu will not be fully available to patrons after 11 PM, but an appetizer menu will be offered until 1 AM; The Board advised the applicants that food must be served when alcohol is offered;
- Patrons do not linger outside, since the restaurant is not a bar;
- For special events, there is a doorman and ID's are checked; there may be a small line at those times;
- Litter control is achieved by daily pickup by staff; there is a dumpster and a recycling bin in the back shared with the House of Teriyaki;
- There is no litter in the front along Main Street by the restaurant; there is one Town trash receptacle in front of the restaurant that appears to be sufficient for the foot traffic;
- Luciano Matarazzo will continue to be involved in the management - he opens up the restaurant in the morning, buys the supplies, takes care of the trash, etc.

Ms. Greenbaum stated that the management of the restaurant seemed fine but the hours of operation are ambiguous. She asked what the usual practice for similar businesses downtown are and what time does Pasta E Basta close now? Mr. Matarazzo said that it closes between 10:30

and 11:00 PM now, but he wants to extend the hours so that the last food and alcohol can be served until 12:45 AM.

Mark Snow, Assistant Building Commissioner noted that the addition of live entertainment, which is listed in the Management Plan, may put the restaurant into another category for the Building Code. If the lights are dimmed and if the entertainment continues after 11 PM, it could be considered as a nightclub, which is a different use group in the Building Code. The restaurant does contain a sprinkler system and fire alarm already, he said, so that some of the code for a nightclub may already be met. Mr. Snow said that he wanted to alert the petitioners that there may be code issues and will talk to them later about the Building Code requirements.

The Board noted that there was not an elevator and the steps to the second floor are very steep. The applicant said that they had received a waiver from the State Architectural Board, with the condition that the service on all three floors would be the same.

Ms. Greenbaum said that she would like to approve the disk jockey and live entertainment (jazz trio or string quartet), but if the Building Code kicked in, then it would determine what kind of entertainment or music would be allowed.

Mr. Woodhull asked if the applicants could alert the Fire Department or Inspection Services in advance of special events so that they would be aware that the restaurant would be used in a different way that evening. The applicant said that they would do so.

Ms. Greenbaum made a motion to close the evidentiary portion of the hearing. Mr. Simpson seconded the motion, and the vote was unanimous to close the hearing.

Public Meeting:

Mr. Simpson asked the Board if there was any opposition to granting the permit. There was none.

The Board reviewed the Management Plan and made three modifications to the wording of points #5 (food service during the hours of operation), #9 (requiring a doorman in evening hours), and #11(litter control by staff.) These will be re-stated in the conditions of the Special Permit. They also reviewed the conditions of the FY96-43 Special Permit and made additions to the conditions, given the more complex nature of the restaurant with its extended hours and three floors of operation.

Findings:

The Board finds under Section 10.38 of the Zoning Bylaw, Specific Findings required of all Special Permits, that:

10.380 and 10.381 – The proposal is suitably located in the neighborhood and is compatible with existing uses because it is located in a general business district with other restaurants having similar hours of operation.

10.382 and 10.385 – The proposal would not constitute a nuisance and reasonably protects the adjoining premises against detrimental or offensive uses on the site because the petitioner stated that the business is a restaurant, not a bar, and would not have lines or obtrusive noise emanating from the building.

10.383 and 10.387 – The proposal would not be a substantial inconvenience or hazard to abutters, vehicles or pedestrians and the proposal provides convenient and safe vehicular and pedestrian movement within the site and in relation to adjacent streets because the restaurant has operated

successfully at this location with three floors in use for several years now. The extended hours should not change the convenience level for abutters, vehicles or pedestrians.

10.384 – Adequate and appropriate facilities would be provided for the proper operation of the proposed use because food will be served during the extended hours of operation. Facilities will not change with this proposal.

10.386 – The proposal ensures that it is in conformance with the Parking and Sign regulations of the town because the site is located within the municipal parking district which provides public parking and no off-street parking is required. Signs are not being changed for the business.

10.389 – The proposal provides adequate methods of disposal and/or storage for sewage, refuse, recyclables and other wastes – waste kitchen oil is disposed of by a third party which recycles the oil, and a dumpster and recycling containers are located in the back of the property.

10.393 – The proposal provides protection of adjacent properties by minimizing the intrusion of lighting because the external lighting is provided by street lights in the B-G district, and the internal lighting is appropriate to a restaurant.

10.398 – The proposal is in harmony with the general purpose and intent of the Zoning Bylaw because it offers a needed service, a quality restaurant in the business center, thus enhancing the welfare of the Town of Amherst.

Public Meeting – Zoning Board Decision

Ms. Greenbaum made a motion to APPROVE the application, with conditions. Mr. Woodhull seconded the motion.

For all of the reasons stated above, the Board VOTED unanimously to modify Special Permit ZBA FY96-0043 to extend the hours of operation to 11AM to 1:30 AM daily and to approve the change of ownership of Pasta E Basta on the premises at 26 Main Street (Map 14A /Parcel 56, B-G Zoning District), with conditions.

THOMAS SIMPSON

HILDA GREENBAUM

ALBERT WOODHULL

FILED THIS _____ day of _____, 2007 at _____,
in the office of the Amherst Town Clerk _____.

TWENTY-DAY APPEAL period expires, _____ 2007.
NOTICE OF DECISION mailed this _____ day of _____, 2007
to the attached list of addresses by _____, for the Board.

NOTICE OF PERMIT or Variance filed this _____ day of _____, 2007,
in the Hampshire County Registry of Deeds.

**Town of Amherst
Zoning Board of Appeals**

SPECIAL PERMIT

The Amherst Zoning Board of Appeals hereby grants a Special Permit to Pasta E Basta, c/o Attorney John B. Howard, to modify Special Permit ZBA FY96-0043 to extend the hours of operation to 11AM to 1:30 AM daily and to approve the change of ownership of the restaurant, on the premises at 26 Main Street (Map 14A /Parcel 56, B-G Zoning District), subject to the following conditions:

1. The operation of the restaurant shall follow the Management Plan as amended and approved at the public meeting on February 8, 2007 and on file in this office. The changes are as follows: (Numbers refer to paragraphs in the Management Plan.)
 5. Hours of operation: Between the hours of 11AM and 1:30 AM, seven days a week. The restaurant menu shall be served from 11 AM to 11 PM, and patrons shall be offered a lighter menu, at least an appetizer menu, until 1 AM.
 9. Management of patrons gathering outdoors on the sidewalk shall be controlled by a doorman in the evening hours.
 12. Litter control shall be maintained by staff and deposited in the dumpster and recycling bins in the rear of the property.
2. The hours of operation, 11AM to 1:30 AM shall be maintained for all three floors of the restaurant.
3. The restaurant shall not be operated as a bar for the serving of alcoholic beverages. Alcohol shall be served only with the purchase of food.
4. All employees who serve alcohol, including the restaurant manager, shall be appropriately trained and certified in responsible methods of alcohol service.
5. No alcohol shall be served after 12:45 AM.
6. Live entertainment such as small jazz or classical groups or pre-recorded music shall be permitted until 12:45 AM.
7. Any changes to the exterior, including lighting or signage, shall be submitted to the Design Review Board and to the Zoning Board of Appeals prior to issuance of a building permit.
8. This permit shall expire upon change of ownership of the restaurant.

THOMAS SIMPSON, Chair
Amherst Zoning Board of Appeals

DATE

